



COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038-AE12

Review of Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: On January 21, 2014, the Commodity Futures Trading Commission (“Commission” or “CFTC”) announced the formation of an interdivisional staff working group (“Working Group”)¹ to review its swap data reporting rules and related provisions set forth in part 45 of the Commission’s regulations.² Among other objectives, the Working Group was asked to identify and make recommendations to resolve reporting challenges, and to consider data field standardization and consistency in reporting by market participants. Consistent with those efforts, and informed by the Working Group’s analysis to date, the Commission today requests comment on specific swap data reporting and recordkeeping rules to help determine how such rules are being applied and to determine whether or what clarifications, enhancements or guidance may be appropriate. This request for comment is limited to part 45 and related provisions.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

¹ The group includes staff from the Division of Market Oversight, the Division of Clearing and Risk, the Division of Swap Dealer and Intermediary Oversight, the Division of Enforcement, the Office of the Chief Economist, the Office of Data and Technology, and the Office of General Counsel.

² Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>.

ADDRESSES: You may submit comments, identified by RIN 3038-AE12, by any of the following methods:

- CFTC web site: Via Comments Online, at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the web site.
- Mail: Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as “Mail,” above.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments may be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9 (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from www.cftc.gov that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as

required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Vincent McGonagle, Director, 202-418-5387, vmcgonagle@cftc.gov, Stuart Armstrong, Special Counsel, 202-418-5095, sarmstrong@cftc.gov, Laurie Gussow, Special Counsel, 202-418-7623, lgussow@cftc.gov, Sebastian Pujol Schott, Associate Director, 202-418-5641, sps@cftc.gov, Daniel Bucsa, Associate Director, 202-418-5435, dbucsa@cftc.gov, Division of Market Oversight; Brian O’Keefe, Deputy Director, 202-418-5658, bokeefe@cftc.gov, Eric Lashner, Special Counsel, 202-418-5393, elashner@cftc.gov, Division of Clearing and Risk; Rajal Patel, Special Counsel, 202-418-5261, rpatel@cftc.gov, Division of Swap Dealer and Intermediary Oversight; Jeffrey Burns, Assistant General Counsel, 202-418-5051, jburns@cftc.gov, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

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- I. Introduction**
- Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)³ amended the Commodity Exchange Act (“CEA” or “Act”) to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention and reporting of data regarding swap transactions, including provisions designed to enhance transparency, promote standardization, and reduce systemic risk. Section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13), which establishes requirements for the real-time reporting and public availability of swap transaction data, and requires all swaps, whether cleared or uncleared, to be reported to registered swap data repositories (“SDRs”).⁴ Sections 723 and 729 of the Dodd-Frank Act added to the CEA, respectively, sections 2(h)(5) and 4r, which, among other things, establish reporting requirements for swaps in effect as of the enactment of the Dodd-Frank Act, as well as swaps entered into after such enactment but prior to the effective date for compliance with final swap data recordkeeping and reporting rules prescribed by the Commission.

³ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁴ See also CEA section 1a(40)(E), 7 U.S.C. 1a(40)(E).

Section 728 of the Dodd-Frank Act added to the CEA new section 21, which established SDRs as a new category of registered entity in order to facilitate the collection and maintenance of swap data as prescribed by the Commission, and to facilitate access to such data by regulators.⁵ In addition, new section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.⁶ These standards are to apply to both registered entities and counterparties involved with swaps.⁷ CEA section 21(b) further directs the Commission to prescribe data standards for SDRs⁸ and mandates that such standards be comparable to those for derivatives clearing organizations.⁹ CEA section 21(c)(3) provides that, once the data elements prescribed by the Commission are reported to an SDR, the SDR shall “maintain the data [prescribed by the Commission for each swap] in such form, in such manner, and for such period as may be required by the Commission.”

After extensive consultation, opportunities for public comment, and coordination with foreign and domestic regulators, the Commission added a new part 43 to its regulations,¹⁰ which sets forth rules for the free, real-time public reporting of swap

⁵ Regulations governing core principles and registration requirements for, and the duties of, SDRs are set forth in part 49 the Commission’s regulations. See Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

⁶ CEA section 21(b)(1)(A), 7 U.S.C. 24a(b)(1)(A), provides that “the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.”

⁷ CEA section 21(b)(1)(B), 7 U.S.C. 24a(b)(1)(B), provides that “in carrying out [the duty to prescribe data element standards], the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.”

⁸ CEA section 21(b)(2), 7 U.S.C. 24a(b)(2), provides that “the Commission shall prescribe data collection and data maintenance standards for swap data repositories.”

⁹ CEA section 21(b)(3), 7 U.S.C. 24a(b)(3), provides that “the [data] standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.”

¹⁰ Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012).

transaction data; new part 45,¹¹ which establishes swap data recordkeeping rules, as well as rules for the reporting of swap transaction data to a registered SDR; new part 46,¹² which sets forth swap data recordkeeping and reporting rules for pre-enactment swaps¹³ and transition swaps¹⁴ (collectively, “historical swaps”);¹⁵ and new part 49, which governs SDR operations and Commission access to SDR data (“SDR Rules”).¹⁶ Collectively, these provisions provide the public and market participants with an unprecedented level of transparency into swaps markets, create rigorous recordkeeping and data reporting regimes with respect to swaps, and enable Commission oversight of swap markets and market participants.

Swap counterparties, including those that are required to be registered with the Commission as swap dealers (“SD”) or as major swap participants (“MSP”), have swap data reporting obligations under part 43, part 45 and part 46 (collectively, the “swap data reporting rules”). The swap data reporting rules also place reporting obligations on derivatives clearing organizations (“DCOs”) that clear swaps; designated contract markets (“DCMs”) that list swaps for trading; and swap execution facilities (“SEFs”). At

¹¹ Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

¹² Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012) (“Historical Swap Reporting Rule”).

¹³ A “pre-enactment swap” is a swap entered into prior to the enactment of the Dodd-Frank Act (July 21, 2010), the terms of which have not expired as of the date of enactment of the Dodd-Frank Act. See Historical Swap Reporting Rule at 35226.

¹⁴ A “transition swap” is a swap entered into on or after the enactment of the Dodd-Frank Act (July 21, 2010), and prior to the applicable compliance date for reporting historical swaps data pursuant to part 46 of the Commission’s regulations. See Historical Swap Reporting Rule at 35227.

¹⁵ See also part 44 of the Commission’s regulations (Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 FR 63080 (Oct. 14, 2010); and Reporting Certain Post-Enactment Swap Transactions, 75 FR 78892 (Dec. 17, 2010)), which established certain record retention requirements for historical swaps, pending the adoption of the Commission’s final rules, set forth at part 46, regarding recordkeeping and reporting with respect to historical swaps.

¹⁶ See SDR Rules, *supra* note 5.

present there are over 150 potential swap data reporting entities registered¹⁷ with the Commission, each of which will have its own business and data standards for listing, executing or clearing swaps in one or more of the five asset classes recognized for the purposes of the swap data reporting rules—interest rates, credit, equity, foreign exchange, and other commodity. In addition, swaps data may currently be reported to any registered SDR, each of which will also have its own data standards.

The Commission remains committed to the regulatory objectives set forth and established in these rules. However, to ensure that the swap data reporting and SDR rules are effective, efficient, and provide the necessary regulatory information, the Commission requests public comment on the questions below, which focus on the swap data recordkeeping and reporting requirements of part 45 and related regulatory provisions.

¹⁷ For purposes of this request for comment, the Commission uses the term “reporting entity” to refer to any person, registrant or non-registrant that has an obligation to report data pursuant to part 45 of the Commission’s regulations, including SDs, MSPs, unregistered swap counterparties, SEFs, DCMs, and DCOs. The Commission is also interested in receiving responses from persons that are complying with part 45 reporting requirements pursuant to the terms and conditions set forth in staff no-action relief such as clearinghouses with no-action relief (“no-action CCPs”) or qualified multilateral trading facilities (“QMTFs”) and foreign boards of trade (“FBOTs”) complying with FBOT registration regulations. *See* CFTC Division of Clearing and Risk, Letter to Eurex Clearing AG, No-Action Letter No. 14-27 (Mar. 10, 2014); CFTC Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight, Conditional No-Action Relief with respect to Swaps Trading on Certain Multilateral Trading Facilities Overseen by Competent Authorities Designated by European Union Member States, No-Action Letter No. 14-16 (Feb. 12, 2014); CFTC Division of Clearing and Risk, Letter to ASX Clear (Futures) Pty Limited, No-Action Letter No. 14-07 (Feb. 6, 2014); CFTC Division of Clearing and Risk, Letter to Japan Securities Clearing Corporation, No-Action Letter No. 13-73 (Dec. 19, 2013); CFTC Division of Clearing and Risk, Letter to LCH.Clearnet SA, No-Action Letter No. 13-43 (July 11, 2013), CFTC Division of Clearing and Risk, Letter to Singapore Exchange Derivatives Clearing Limited, No-Action Letter No. 12-63 (Dec. 21, 2012); CFTC Division of Clearing and Risk, Letter to Japan Securities Clearing Corporation, No-Action Letter No.12-56 (Dec. 17, 2012). Staff no-action letters (“NALs”) are available at <http://www.cftc.gov/LawRegulation/DoddFrankAct/CurrentlyEffectiveStaffLetters/index.htm>.

The list of registered entities with reporting obligations includes reporting entities fully registered with the Commission and entities that have received provisional registration and/or temporary registration. Specifically, as of March 1, 2014, it includes 98 SDs; 23 SEFs; 18 DCMs; 15 DCOs; and two MSPs. Not all entities that are potential swap reporting entities currently execute or clear swaps. For example, 9 of the 15 registered DCOs currently clear swaps.

II. Request for Comment

The Commission is soliciting comment from all interested parties regarding part 45 and related provisions of the swap data reporting and SDR rules. Questions are generally grouped according to the applicable regulatory provision. Each series of questions includes a brief explanatory paragraph intended to provide context for the questions presented. Relevant topics include, among other things, the reporting of primary economic terms (“PET”), confirmation, and continuation data; the manner in which the reporting rules address diversity of transaction types, business models, and data flows present in the swaps market; the reporting of cleared swaps; and data ownership issues and data harmonization.

Commenters’ responses should identify the specific question or sub-question that they are addressing in each response. Responses should consider the oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

III. Issues and Questions

A. Confirmation Data (§ 45.3): What terms of a confirmation of a swap transaction should be reported to an SDR as “confirmation data”?

Part 45 requires the reporting of required swap creation data,¹⁸ which includes PET data¹⁹ and “confirmation data,” defined as “all of the terms of a swap matched and

¹⁸ 17 CFR 45.1 (defining required swap creation data as “all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap”).

¹⁹ 17 CFR 45.1 (defining primary economic terms as “all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question”).

agreed upon by the counterparties in confirming the swap.”²⁰ The Commission requests comment on the following questions regarding confirmation data that memorializes the agreement of the party to all terms of a swap.

1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.
 - a. For confirmations that incorporate terms by reference (e.g., ISDA Master Agreement; terms of an Emerging Markets Trade Association (“EMTA”)), which of these terms should be reported to an SDR as confirmation data?
2. Should the confirmation data reported to an SDR regarding cleared swaps be different from the confirmation data reported to an SDR regarding uncleared swaps? If so, how?
3. Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding: (a) swaps that are required to be cleared but not subject to the trade execution requirement; (b) swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution; (c) swaps that are voluntarily submitted to clearing at some point after execution (e.g., backloaded trades); and (d) uncleared swaps? If so, how?
4. More generally, please describe any operational, technological, or other challenges faced in reporting confirmation data to an SDR.

²⁰ 17 CFR 45.1 (defining “confirmation data”).

B. Continuation Data (§ 45.4): How can the Commission ensure that timely, complete and accurate continuation data is reported to SDRs, and that such data tracks all relevant events in the life of a swap?

Part 45 of the Commission’s regulations defines “required swap continuation data” as “all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the SDR remains current and accurate, and includes all changes to PET data occurring during the existence of the swap.”²¹ A swap’s continuation data includes all lifecycle event data if the swap is reported using the lifecycle reporting method,²² or all state data²³ if the swap is reported using the snapshot reporting method.²⁴ In addition, continuation data also includes all valuation data for the swap.²⁵

Since implementation of part 45, market participants have raised a number of questions with respect to how certain events in the life of a swap should be represented when reporting continuation data. Divergent methods of reporting continuation data may introduce challenges to tracking the life of a swap. In addition, some non-SD/MSP counterparties have indicated that they have sometimes encountered difficulties in reporting continuation data to SDRs and in accessing data reported on their behalf by SDs and MSPs. Accordingly, the Commission requests comment on the following questions regarding continuation data.

²¹ Id.

²² See generally, 17 CFR 45.4.

²³ See 17 CFR 45.1 (defining “state data”).

²⁴ See generally, 17 CFR 45.4.

²⁵ Id.

5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?
6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).
 - a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?
 - b. How should reporting entities identify the reason why two swaps are linked (e.g., identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?
 - c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?
 - d. How should related swaps reported to different SDRs be linked?
 - i. **Snapshot/State/Lifecycle Methods (§ 45.4)**
7. What are the benefits and/or disadvantages of reporting continuation data using: (i) the lifecycle reporting method; and (ii) the snapshot reporting method?
 - a. Are there events or information that can be represented more effectively using one of the reporting methods rather than the other?
 - b. Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?

ii. **Valuation Data Reporting (§§ 45.4(b), 45.4(c), and NALs 13-34 and 12-55)²⁶**

8. How can valuation data most effectively be reported to SDRs to facilitate Commission oversight? How can valuation data most effectively be reported to SDRs (including specific data elements), and how can it be made available to the Commission by SDRs?
- a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?
 - b. What challenges and benefits are associated with unregistered swap counterparties (both financial entities²⁷ and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?

iii. **Events in the Life of a Swap (§ 45.4)**

9. Please: (i) identify and (ii) describe the complete range of events that can occur in the life of a swap. Please also address whether, and if so how, reporting entities should report each such event.
- a. How should events in the life of a swap be represented in SDR data? For example, should an “event type” identifier, as well as a description of the specific event, be required?

²⁶ See CFTC Division of Market Oversight, Extension of Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from Compliance with Reporting Obligations Under 17 CFR 45.4(b)(2)(ii), No-Action Letter No. 13-34 (June 26, 2013); CFTC Division of Market Oversight, Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants From Compliance With Reporting Obligations Under 17 CFR 45.4(b)(2)(ii), No-Action Letter No. 12-55 (Dec. 10, 2013).

²⁷ CEA section 2(h)(7)(C), 7 U.S.C. 2(h)(7)(C); see also 17 CFR 1.3(mmm).

10. Can swap data reporting be enhanced so that the current state of a swap in an SDR (e.g., open, cancelled, terminated, or reached maturity) can be determined more efficiently and, if so, how?
- a. What role should SDRs play in auditing swaps data to help identify the current state of a swap?
 - b. Should reporting entities and/or SDRs be required to take any actions upon the termination or maturity of a swap so that the swap's status is readily ascertainable and, if so what should those requirements be?
 - c. Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void ab initio, continue to be reported to and identified in SDR data? Why or why not? If so, how?²⁸
 - i. Should the swap data reporting rules be enhanced or further clarified to address void ab initio swaps?
11. Should the Commission require periodic reconciliation between the data sets held by SDRs and those held by reporting entities?
- iv. **Change in Status of Reporting Counterparty (§ 45.8)**
12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory

²⁸ See Staff Guidance on Swaps Straight-Through Processing (Sept. 26, 2013), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/stpguidance.pdf>; CFTC Division of Clearing and Risk and Division of Market Oversight, Time-Limited No-Action Relief for Swap Execution Facilities from Compliance with Certain Requirements of Commission Regulation 37.9(a)(2) and 37.203(a), No-Action Letter No. 13-66 (Oct. 25, 2013).

requirements, including the reporting hierarchy in CEA section 4r(a)(3),²⁹ what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?

C. Transaction Types, Entities, and Workflows: Can the Swap Data Reporting Rules be Clarified or Enhanced to Better Accommodate Certain Transactions and Workflows Present in the Swaps Market?

Market participants have requested clarification from Commission staff regarding the appropriate manner to report certain swap transactions and workflows that are not explicitly addressed in the swap data reporting rules. Accordingly, the Commission requests comment related to the specific questions below.

13. Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared. Please include in your response any processes arising from all relevant platforms and methods of execution.
14. Please identify any Commission rules outside of part 45 that impact swap data reporting pursuant to part 45. How do such other rules impact part 45 reporting?
15. What are the challenges presented to reporting entities and other submitters of data when transmitting large data submissions to an SDR? Please include the submission methods utilized and the technological and timing challenges presented.

²⁹ See 7 U.S.C. 6r(a)(3) (providing that, with respect to a swap in which only one counterparty is an SD or MSP, the SD or MSP shall report the swap; with respect to a swap in which one counterparty is an SD and the other an MSP, the SD shall report the swap; and with respect to any other swap, the counterparties to the swap shall select a counterparty to report the swap).

i. **Bespoke Transactions (§ 45.3, Appendix 1 to Part 45, and NALs 13-35, and 12-39)**³⁰

16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?

ii. **Allocations and Compressions (§§ 45.3, 45.4, NALs 13-01 and 12-50)**³¹

17. Please describe any challenges associated with the reporting of allocations. How should allocation data elements (i.e., indications of whether swaps will be allocated, as well as the identities of entities to which portions of executed swaps are allocated) be reported to SDRs?

³⁰ See CFTC Division of Market Oversight, Additional Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations, No-Action Letter No. 13-35 (June 27, 2013) ("NAL 13-35"); CFTC Division of Market Oversight, Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations, No-Action Letter No. 12-39 (Nov. 30, 2012) ("NAL 12-39").

³¹ See CFTC Division of Clearing and Risk, No-Action Relief from Required Clearing for Swaps Resulting from Multilateral Portfolio Compression Exercises, No-Action Letter No. 13-01 (Mar. 18, 2013); CFTC Division of Market Oversight, Time-Limited No-Action Relief for Agents from the Post-Allocation Swap Timing Requirement of § 45.3(e)(ii)(A) of the Commission's Regulations, No-Action Letter No. 12-50 (Dec. 13, 2012).

18. How should swaps resulting from compression exercises and risk mitigation services be reported to, and identified in, an SDR so that the Commission is able to effectively review these exercises and determine what swaps result from a specific exercise?

- a. Please describe any technological, operational, or logistical challenges associated with reporting of such swap transactions.

iii. Prime Brokerage (NAL 12-53)³²

19. Please describe any challenges associated with the reporting of prime brokerage swap transactions (e.g., challenges related to transactions executed either bilaterally or on a platform and/or involving different asset classes)?

iv. Commodity Trade Options (NAL 13-08)³³

20. Under Commission regulation 32.3(b)(1), swap counterparties generally are required to report trade options pursuant to the reporting requirements of part 45 if, during the previous twelve months, they have become obligated to report under part 45 as the reporting counterparty in connection with any non-trade option swaps. Under Commission regulation 32.3(b)(2), trade options that are not otherwise required to be reported to an SDR under part 45 are required to be reported to the Commission by both counterparties to the transaction through an annual Form TO filing. Please describe any challenges associated with the reporting of commodity trade options, whether reported to an SDR or to the Commission on Form TO.

³² See CFTC Division of Market Oversight, Time-Limited No-Action Relief from (i) Parts 43 and 45 Reporting for Prime Brokerage Transactions, and (ii) Reporting of Unique Swap Identifiers in Related Trades under Part 45 by Prime Brokers, No-Action Letter No. 12-53 (Dec. 17, 2012).

³³ See CFTC Division of Market Oversight, Staff No-Action Relief from the Reporting Requirements of § 32.3(b)(1) of the Commission's Regulations, and Certain Recordkeeping Requirements of § 32.3(b), for End Users Eligible for the Trade Option Exemption, No-Action Letter No. 13-08 (Apr. 5, 2013).

v. **Swaps Executed or Cleared on or by FBOTs, No-Action CCPs, QMTFs, and Other Non-Registrants/Exempt Entities (§§ 45.3, 45.4, 45.5, and NALs 14-27, 14-16, 14-07, 13-73, 13-43, 13-33, 12-63, and 12-56)**³⁴

21. Are there instances in which requirements of CFTC regulations or reliance on exemptive or staff no-action relief³⁵ result in more than one party reporting data to an SDR regarding a particular swap? If so, how should such duplicative reporting be addressed? What should be the role of the reporting entities, as well as other submitters of data, and SDRs in identifying and deleting duplicative reports? What solutions should be implemented to prevent such duplicative reporting?
22. In addition to those entities enumerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers (“USIs”)? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.
23. How should data reported to SDRs identify trading venues such as SEFs, DCMs, QMTFs, FBOTs, and any other venue?

vi. **Inter-Affiliate Swaps (§§ 45.3, 45.4, 45.6, and NAL 13-09)**³⁶

24. In order to understand affiliate relationships and the combined positions of an affiliated group of companies, should reporting counterparties report and identify

³⁴ See note 17, supra.

³⁵ Staff no-action letters are available at <http://www.cftc.gov/LawRegulation/DoddFrankAct/CurrentlyEffectiveStaffLetters/index.htm>.

³⁶ See CFTC Division of Market Oversight and Division of Clearing and Risk, No-Action Relief for Swaps Between Affiliated Counterparties That Are Neither Swap Dealers Nor Major Swap Participants from Certain Swap Data Reporting Requirements Under Parts 45, 46, and Regulation 50.50(b) of the Commission’s Regulations, No-Action Letter No. 13-09 (Apr. 5, 2013).

(and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6?³⁷ If so, how?

vii. Reliance on No-Action Relief in General

25. To the extent that a reporting entity is, in reliance on effective no-action relief issued by Commission staff, reporting to an SDR in a time and/or manner that does not fully comply with the swap data reporting rules (e.g., outside reporting rules' timeframe, required data elements missing), how can the reporting entity most effectively indicate its reliance upon such no-action relief for each affected data element?
- a. Are there any other challenges associated with the reliance on staff no-action relief with respect to compliance with part 45? If so, please describe them and explain how the swap data reporting rules should address those challenges.

viii. Post-Priced Swaps (§§ 45.3 and 45.4)

26. Under the swap data reporting rules, are there any challenges presented by swaps for which the price, size, and/or other characteristics of the swap are determined by a hedging or agreed upon market observation period that may occur after the swap counterparties have agreed to the PET terms for a swap (including the pricing methodology)? If so, please describe those challenges.

³⁷ Commission regulation 45.6 provides that level two reference data for each swap counterparty, consisting of the identity of the counterparty's ultimate parent, shall be reported into a level two reference database. The Commission shall determine the location of the level two reference database by means of a Commission order that is published in the Federal Register and on the Commission's website. The order shall include notice of the location of the level two reference database and information concerning the procedure and requirements for reporting level two reference data to the database. The obligation to report level two reference data does not apply until the Commission has determined the location of the level two reference database. As of March 1, 2014, the obligation to report level two reference data pursuant to Commission regulation 45.6 does not apply.

ix. Complex Swap Transactions (NAL 14-12)³⁸

27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?

D. PET Data and Appendix 1 (§ 45.3 and Appendix 1): Monitoring the Primary Economic Terms of a Swap.

Appendix 1 to part 45 sets forth a list of minimum PET terms for swap transactions within each of the five asset classes. Market participants have indicated that there are circumstances in which they face challenges in either the initial reporting of certain PET terms or the subsequent reporting of modifications to these terms. Market participants have also indicated that the data elements included in Appendix 1 may not sufficiently reflect all necessary economic terms for various swap transactions.

28. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to:

- a. Cleared status;
- b. Collateralization;
- c. Execution timestamp;
- d. Notional value;
- e. U.S. person status; and

³⁸ See CFTC Division of Market Oversight, No-Action Relief from the Commodity Exchange Act Sections 2(h)(8) and 5(d)(9) and from Commission Regulation § 37.9 for Swaps Executed as Part of a Package Transaction, No-Action Letter No. 14-12 (Feb. 10, 2014).

- f. Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).

29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

- a. Should the Commission require reporting of the identities, registration status, and roles of all parties involved in a swap transaction (e.g., special entity (as defined in Commission regulation 23.401(c)); executing broker; or voice/electronic systems)?
- b. What, if any, additional fields would assist the Commission in obtaining a more complete picture of swaps executed on SEFs or DCMs (e.g., order entry time; request for quote (“RFQ”), or central limit order book (“CLOB”), or order book; request for cross, blocks, and other execution method indicators or broker identification)?

- c. Are there additional data elements that could help the Commission fulfill its oversight obligations, as described above?
 - d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?
30. Have reporting entities been unable to report to an SDR terms or products that they believe are required under part 45 or related provisions? If so, please generally describe the data elements and/or products involved.
- a. Where a single swap has more than two counterparties, please comment on how such information should be provided within a single part 45 submission (i.e., one USI)?
31. Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows reflected in a swap as agreed upon at the time of execution? If so, how could the requirements be modified to capture such a schedule?
32. Taking into account the European Union's reporting rules³⁹ and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral is reported for cleared and uncleared swaps?

³⁹ See European Securities Markets Authority's European Market Infrastructure Regulation ("EMIR") and corresponding rules, available at <http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR>.

E. Reporting of Cleared Swaps (§§ 45.3, 45.4, 45.5, and 45.8): How Should the Swap Data Reporting Rules Address Cleared Swaps?

The Commission has a strong regulatory interest in monitoring transactions and risk in both the cleared and uncleared swap markets. Information regarding cleared swaps (both voluntarily cleared and required to be cleared) comes directly to the Commission daily in the form of position information under Commission regulation 39.19. In addition, pursuant to the swap data reporting rules, cleared swap information is reported on a transaction basis to SDRs. The Commission monitors the cleared swap market on a transaction and position basis to ensure compliance with the Act and Commission rules, including those associated with trade execution and clearing and the clearing requirement in section 2(h)(1) of the Act.

Cleared swaps currently are reported as three separate swaps.⁴⁰ Industry convention refers to the original swap as the “alpha” swap and the two equal and opposite resulting swaps as the “beta” and “gamma” swaps. The Commission has previously determined that the alpha, beta, and gamma swaps, although related, are reported as separate swaps for purposes of part 45.⁴¹ Information regarding the alpha, beta, and gamma swaps in an SDR must at all times be current and accurate and include all changes to each swap throughout its lifecycle.⁴²

⁴⁰ Commission regulation 39.12(b)(6) requires a DCO to have a rule providing that once a swap is accepted for clearing by a DCO such swap is extinguished and is replaced by two equal and opposite swaps. 17 CFR 39.12(b)(6).

⁴¹ See 77 FR 2136; Statement of the Commission on the Approval of CME Rule 1001 at 6 (“A cleared swap in fact comprises three separate swaps.”), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

⁴² See 17 CFR 45.4(a) (“[R]eporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms

The Commission requests comment on the existing cleared swaps reporting framework. The Commission is particularly interested in the extent to which the reporting of cleared swaps can be improved to: (i) ensure consistency across the Commission's regulations; and (ii) achieve efficiencies in both the Commission's review of cleared swaps data and the DCOs' reporting of information to the Commission and SDRs. In this regard, the Commission seeks comment on what additional data elements, if any, should be reported to an SDR with respect to cleared swaps that would provide the Commission with information necessary to monitor and track swaps created through clearing and resulting positions facing the DCO.

The Commission also requests comment related to the specific questions below.

33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests

comment on how cleared swaps should be reported. Specifically:

- a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and ipso facto the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?
- b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?

of the swap occurring during the existence of the swap.”); see 77 FR at 2153 (“[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.”); see also 17 CFR 49.11 (confirmation of data accuracy).

- c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?
 - d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.
34. In addressing the questions posed in items 33 (a)-(d), commenters are also requested to address how any modifications to the reporting of cleared swaps would be consistent with the swap reporting requirement in CEA section 2(a)(13)(G) and the restrictions on CFTC exemptive authority in CEA section 4(c)(1)(A)(i)(I).
35. Can the existing rules be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap (alpha) and the two new resulting swaps (beta and gamma)? If so, please explain.
- a. Responses should address:
 - i. The reporting obligations applicable to alpha swaps;
 - ii. The reporting obligations applicable to beta and gamma swaps;
 - iii. Who holds the reporting obligation(s) for each swap;
 - iv. The reporting of the linkage of alpha, beta, and gamma swaps; and
 - v. Who has the legal right to determine the SDR to which data is reported?
36. What steps should reporting entities and/or SDRs undertake to verify the absence of duplicate records across multiple SDRs for a single cleared swap transaction?

37. How should cleared swap data be represented in the SDR to facilitate the Commission's oversight of compliance with clearing-related rules, including the clearing requirement (Commission regulations 50.2 and 50.4) and straight-through processing requirements (Commission regulations 1.74, 23.506, 37.702(b), 38.601, and 39.12(b)(7))?
38. What reporting technique, term, or flag is recommended to identify a cleared swap?
- i. **CDS-Clearing Related Swaps and Open Offer (Part 45 and NALs 12-59, 13-36, and 13-86)**⁴³
39. Swaps created by operation of a DCO's rules related to determining the end-of-day settlement prices for cleared credit default swaps ("CDS") are also known as "firm trades" or "clearing-related swaps" (see NAL 13-86). How should these swaps be reported pursuant to the swap data reporting rules?
40. Aside from "firm trades," some swaps may be created from "open offer," meaning there is no original swap between two counterparties, but only equal and opposite swaps between each of the counterparties and the clearinghouse. How should the swap data reporting rules address such swaps?
- ii. **DCO Reporting, Netting Processes, and Positions (§§ 45.3 and 45.4)**
41. As described above, DCOs provide position data to the Commission pursuant to part 39 and report transactions to SDRs pursuant to part 45. The Commission is aware of

⁴³ See CFTC Division of Market Oversight, Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from the Reporting Provisions of Part 45 for CDS Clearing-Related Swaps, No-Action Letter No. 12-59 (Dec. 19, 2012); CFTC Division of Market Oversight, Extension of Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from the Reporting Requirements of Part 45 for CDS Clearing-Related Swaps, No-Action Letter No. 13-36 (June 27, 2013); CFTC Division of Market Oversight, Provision of Time-Limited No-Action Relief to DCOs and their Clearing Members from the SEF Registration Requirement and Trading Mandate under Part 37 and from Various Reporting Requirements under Part 45, all in Connection with CDS Clearing-Related Swaps, No-Action Letter No. 13-86 (Dec. 31, 2013).

potential overlap in these data sets. With respect to such overlap, how can reporting of swaps data be made more efficient, while ensuring that the Commission continues to receive all data necessary to fulfill its regulatory responsibilities?

42. For cleared swaps, how can the netting and compression of swaps and positions by DCOs be most effectively represented?

- a. Please provide recommendations regarding the reporting of netting and compression, and describe any relevant differences in reporting of netting and of compression.
- b. Are netting and compression different concepts in the uncleared swaps markets versus the cleared swap market? If so, how?

F. Other SDR and Counterparty Obligations (§§ 45.9, 45.13, 45.14): How Should SDRs and Reporting Entities Ensure That Complete and Accurate Information is Reported to, and Maintained by, SDRs?

When using swaps data reported to SDRs, the Commission must rely on the accuracy and completeness of such data throughout the life of a swap. Data accuracy can be achieved through, among other means, SDR processes confirming the accuracy of data submitted, data reconciliation exercises by reporting entities, and by the prompt reporting of errors and omissions by reporting entities.

Commission regulation 45.14 requires registered entities and swap counterparties to report any errors or omissions in data they previously reported. Additionally, each non-reporting counterparty to a swap that discovers an error or omission with respect to swap data reported to an SDR must promptly notify the reporting counterparty of the error or omission. Commission regulation 49.11 requires SDRs to adopt policies and

procedures to ensure the accuracy of swap data and to confirm the accuracy of all swap data reported pursuant to part 45. Commission regulation 49.11(b) provides—in pertinent part—that a registered SDR “has confirmed the accuracy of swap data submitted directly by a counterparty if the [SDR] has notified both counterparties of the data that was submitted and received from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors.”

43. The Commission requests comment that addresses whether reporting entities face challenges with respect to complete and accurate swap data reporting.

44. The Commission also requests comment regarding whether clarifications or enhancements to swap data reporting requirements, including requirements relating to the reporting of errors and omissions and requirements for data reconciliation across reporting entities, could facilitate accurate and complete reporting of data to the SDRs, as well as data maintained in the SDRs.

45. Should third-party service providers that report part 45 data to SDRs on behalf of reporting entities be required to register with the Commission?

i. Confirmation of Data Accuracy and Errors and Omissions (§ 45.14)

46. Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR.

47. In what situations should an SDR reject part 45 data from entities due to errors or omissions in the data? How should the Commission balance legal requirements for reporting as soon as technologically practicable and the need for complete and accurate data?
48. All data in an SDR must be current and accurate, and the Commission expects SDRs, counterparties, and registered entities to take proactive steps to ensure data accuracy. Are there challenges that a reporting entity faces in confirming data accuracy? If so, how can those challenges most effectively be addressed?
49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?

ii. SDR Required Data Standards (§ 45.13)

50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.
51. How should SDRs leverage the results of data elements harmonization to help ensure regulatory reporting is more accurate and consistent?
52. Are there additional existing swaps data standards (other than the legal entity identifier (“LEI”), unique product identifier (“UPI”) and USI) that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?

iii. Identifiers (§§ 45.5, 45.6 and 45.7)

53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.

- a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?

54. What principles should the Commission consider when designating a UPI and product classification system pursuant to § 45.7?

- a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.

55. Please explain your experiences and any challenges associated with the creation, transmission and reporting of USIs.

G. Swap Dealer/Major Swap Participant Registration and Compliance: How Can the Commission Enhance Part 45 to Facilitate Oversight of Swap Dealers and Major Swap Participants?

One Commission interest in swap data reporting is to evaluate whether a market participant meets the definition of, and is required to register as, an SD or MSP.⁴⁴ The Commission can use swap data reports to determine a market participant's aggregate gross notional amount of swap transactions on a rolling 12-month basis, taking into account, among other things, the definitions of SD and MSP and the Commission's

⁴⁴ 17 CFR 1.3(ggg); see Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant," 77 FR 30596 (May 23, 2012).

registration requirements.⁴⁵ Additionally, swap data reporting allows the Commission to assess a market participant's compliance with the Commission's regulations, including, but not limited to, part 23 requirements for SDs and MSPs (e.g., swap confirmation,⁴⁶ portfolio compression,⁴⁷ and swap processing and clearing requirements⁴⁸).

The Commission requests comment on what clarifications or enhancements, if any, should be made to the swap data reporting rules so that it may better monitor SDs and MSPs. The Commission also requests comment related to the specific questions below.

56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (e.g., for purposes of monitoring the SD de minimis calculation)?
57. Should data elements be reported to the SDR to reflect whether a swap is a dealing or non-dealing swap? If so, how should this information be reflected in the SDR?

⁴⁵ 17 CFR 3.10; see Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

⁴⁶ 17 CFR 23.501; see Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55903 at 55917 (Jan. 19, 2012) ("Confirmation has been recognized as an important post-trade processing mechanism for reducing risk and improving operational efficiency by both market participants and their regulators. Prudent practice requires that, after coming to an agreement on the terms of a transaction, parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of their agreement.").

⁴⁷ 17 CFR 23.503; see 77 FR at 55932 ("Portfolio compression is an important, post-trade processing and netting mechanism that can be an effective and efficient tool for the timely and accurate processing and netting of swaps by market participants.").

⁴⁸ 17 CFR 23.506; see Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 at 21281 (Apr. 9, 2012) (noting that the rule was adopted "in order to ensure compliance with any mandatory clearing requirement issued pursuant to section 2(h)(1) of the CEA and to promote the mitigation of counterparty credit risk through the use of central clearing").

58. Where transactions are executed in non-U.S. dollar (“USD”) denominations, should the SDR data reflect USD conversion information for the notional values, as calculated by the counterparty at the time of the transaction (rather than the conversion taking place at the SDR)?

- a. If so, how should the SDR data reflect this information?
- b. Would this answer be different depending on the registration status of the reporting counterparty (e.g., SD/MSP)?

H. Risk: How Can Part 45 Better Facilitate Risk Monitoring and Surveillance?

Swap data reported to SDRs facilitates a number of Commission risk monitoring and surveillance activities, including monitoring of both financial and market risks resulting from the accumulation of large positions in cleared and uncleared swaps.

The Commission has supervisory programs for DCOs, futures commission merchants, SDs, MSPs, and other participants in the clearing system. These programs monitor market participants’ compliance with applicable provisions of the Act and Commission regulations, including parts 1, 22, 23, 39, and 50. A primary concern of these programs is to monitor and mitigate potential risks that can arise from swaps activities.

With respect to clearing, the Commission conducts periodic examinations of DCOs, and Commission risk surveillance staff monitors, on a daily basis, the risks posed to or by DCOs, clearing members, and market participants. This analysis includes reviewing position data at the trader, clearing member, and DCO levels.

The Commission requests comment on what clarifications or enhancements, if any, should be made to the swap data reporting rules so that it may better monitor risk

and conduct related surveillance. The Commission also requests comment on the specific questions below.

59. Should the Commission require SDRs to calculate market participants' positions in cleared and uncleared swaps?

a. Given the definition of "position" in part 49 of the Commission's regulations,⁴⁹ and the transactional nature of swap data reporting, how should an SDR calculate the positions of market participants whose swaps are reported to it?

i. Please explain whether these calculations should differ by underlying instrument, index or reference entity, counterparty, asset class, long risk of underlying instrument, index, or reference entity, or short risk of the underlying instrument, index or reference entity, or any other attribute.

b. How should SDR positions or position calculation methods relate, if at all, to positions calculated by DCOs and DCOs' position calculation methods?

60. Are there data elements that should be reported on a transaction basis to identify the linkage between a swap transaction and a reporting counterparty's other positions in products regulated by the Commission?

61. How can swap data reporting be enhanced to facilitate the calculation of positions within SDRs?

⁴⁹ See 17 CFR 49.2; SDR Rules at 54576.

- a. How should position information within an individual SDR be aggregated across multiple SDRs so that the Commission has a complete view of a market participant's risk profile for swaps reportable under Dodd-Frank?
 - b. How can the Commission efficiently aggregate information by product and by market participant in order to understand positions across cleared and uncleared markets?
62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?
63. What international regulatory coordination would be necessary to facilitate such data aggregation?

I. Ownership of Swap Data and Transfer of Data Across SDRs

Since the adoption of the swap data reporting and SDR rules, questions have emerged whether a particular party or parties have the legal authority to direct and/or use such swap data.

Commission regulation 49.17(g) generally prohibits a registered SDR from using the data it maintains for commercial or business purposes. As part of this prohibition, Commission regulation 49.17(g) requires registered SDRs to adopt and implement adequate “firewalls” to protect the swaps data from any improper commercial use. Commission regulation 49.17(g)(2) provides a limited exception if the submitters of the data provide express written consent to the SDR.⁵⁰

⁵⁰ The statutory basis for the regulation is set forth in Sections 21(c)(6), 21(c)(7), and 21(f)(3) of the CEA adopted as part of Section 728 of the Dodd-Frank Act, 7 U.S.C. 24a(c)(6), 24a(c)(7), and 24a(f)(3).

Because of the inherent conflicts in connection with maintaining swap data and SDR operations (e.g., the incentive to develop ancillary services using swap data), the Commission in part 49 required that “commercial use” of any data submitted to and maintained by an SDR be restricted. Accordingly, Commission regulation 49.27 requires registered SDRs to provide fair, open and equal access to their services and provides that registered SDRs must not discriminate against submitters of data regardless of whether such a submitter has agreed to any “commercial use” of its data.

The basis for prohibiting SDRs from commercializing Core Data⁵¹ without the consent of the counterparties is based on (i) the duty of the SDR set forth in Section 21(c)(6) of the CEA to keep swap information private and confidential, and (ii) the inherent conflict of interest for an SDR to use Core Data for commercial purposes. Core Principle 3 set forth in Section 21(f)(3) of the CEA requires SDRs to “establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository.” Commission regulation 49.17(g) permits an SDR to disclose, consistent with Section 8 of the CEA, aggregated data information if such disclosure is not for a commercial purpose. In sum, part 49 provides an SDR with an implied license to use Core Data for regulatory purposes, and absent the consent of the counterparties, an SDR would be prohibited from commercially benefiting from the use of such Core Data. The Commission is requesting industry and public input on whether the current Commission regulations regarding “commercialization” of data are consistent with legal property interests and industry practices.

⁵¹ Core Data constitutes the two separate streams of data received by SDRs: “(i) Data related to real-time public reporting which by its nature is publicly available and (ii) data that is intended for use by the Commission and other regulators which is subject to statutory confidential treatment.” SDR Rules at 54550.

Additionally, the Commission requests comment related to the specific questions below.

64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?

- a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?
- b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?
- c. What would be the basis for property rights in the data for each of these scenarios?
- d. What ownership interests, if any, are held by third-party service providers?
- e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity?

65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?

- a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?
- b. Does commercialization of swap data increase potential data fragmentation?
- c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?

66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide “consent” to further distribution or use of swap transaction data for commercial purpose by the SDR?
67. Even though swap data reported to an SDR must be available for public real-time reporting, should any use of such real-time data or commercialization of such data occur only with the specific consent of the counterparties to the swap?
68. An ancillary issue relating to commercialization of data and legal property rights relates to the “portability” of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or “ported” to another SDR.⁵² The Commission seeks comment on whether § 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported?

J. Additional Comment

69. To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) the accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data.

⁵² The Commission did provide that SDR data could be transferred or moved to another SDR in the case of an SDR ceasing to operate as an SDR registered the Commission. See 17 CFR 49.4.

Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.

- a. What challenges do Commission registrants (SDs, MSPs, SEFs, DCMs, and DCOs) face as reporting entities and reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?
- b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?
- c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

Issued in Washington, DC, on March 19, 2014, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

**Appendices to Request for Comment on Part 45 and Related Provisions of the
Commission's Swap Data Reporting Rules**

Appendix 1 – Commission Voting Summary

On this matter, Acting Chairman Wetjen and Commissioners Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

Appendix 2 – Statement of Commissioner Scott D. O’Malia

I support the request for comment on part 45 and related provisions of the Commission’s swap data reporting rules. I commend the cross-divisional data team’s effort to fix our reporting rules and enhance the Commission’s ability to use its data. I hope that the data team and the Commission will carefully evaluate market participants’ comments and recommendations and develop workable solutions to improve our data reporting regime.

At the same time, I urge market participants to carefully review the Commission’s questions, submit their comments, and alert the Commission to other data reporting issues that have not been included in this request for comment. This comment period is a critical step in the Commission’s effort to improve its data utilization. I encourage all market participants to help the Commission improve its data reporting regime.

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